

Senate Study Bill 1137

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON KREIMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to automobile or motor vehicle insurance coverage
2 of liability arising from uninsured, underinsured, or
3 hit-and-run motorists.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1752SC 83
6 av/nh/5

PAG LIN

1 1 Section 1. Section 516A.1, Code 2009, is amended to read
1 2 as follows:
1 3 516A.1 COVERAGE INCLUDED IN EVERY LIABILITY POLICY ==
1 4 REJECTION BY INSURED.
1 5 1. ~~No~~ An automobile liability or motor vehicle liability
1 6 insurance policy insuring against liability for bodily injury
1 7 or death arising out of the ownership, maintenance, or use of
1 8 a motor vehicle shall not be delivered or issued for delivery
1 9 in this state with respect to any motor vehicle registered or
1 10 principally garaged in this state, unless coverage is provided
1 11 in such policy or supplemental thereto, for the protection of
1 12 persons insured under such policy who are legally entitled to
1 13 recover damages from the owner or operator of an uninsured
1 14 motor vehicle or a hit-and-run motor vehicle or an
1 15 underinsured motor vehicle because of bodily injury, sickness,
1 16 or disease, including death resulting therefrom, caused by
1 17 accident and arising out of the ownership, maintenance, or use
1 18 of such uninsured or underinsured motor vehicle, or arising
1 19 out of physical contact ~~of with, or reasonable avoidance of~~
1 20 physical contact with, such hit-and-run motor vehicle with the
1 21 person insured or with a motor vehicle which the person
1 22 insured is occupying at the time of the accident. Both the
1 23 uninsured motor vehicle or hit-and-run motor vehicle coverage,
1 24 and the underinsured motor vehicle coverage shall include
1 25 limits for bodily injury or death at least equal to ~~those~~
1 26 ~~stated in section 321A.1, subsection 11 the limits of~~
1 27 ~~liability for the bodily injury portion of the insurance~~
1 28 ~~policy.~~ The form and provisions of such coverage shall be
1 29 examined and approved by the commissioner of insurance.
1 30 2. ~~However, the~~ The named insured may reject all of ~~such~~
1 31 ~~the coverage required in subsection 1,~~ or reject the uninsured
1 32 motor vehicle (hit-and-run motor vehicle) coverage, or reject
1 33 the underinsured motor vehicle coverage, by written rejections
1 34 signed by the named insured. If rejection is made on a form
1 35 or document furnished by an insurance company or insurance
2 1 producer, ~~it~~ the rejection shall be on a separate sheet of
2 2 paper which contains only the rejection and information
2 3 directly related to ~~it~~ the rejection, including an explanation
2 4 of the coverage being rejected and the amount of the premium
2 5 associated with the coverage being rejected. Such coverage
2 6 need not be provided in or supplemental to a renewal policy if
2 7 the named insured has rejected the coverage in connection with
2 8 a policy previously issued to the named insured by the same
2 9 insurer.
2 10 Sec. 2. Section 516A.2, Code 2009, is amended to read as
2 11 follows:
2 12 516A.2 CONSTRUCTION == MINIMUM COVERAGE == ~~STACKING~~
2 13 ~~STEP-DOWN PROVISIONS.~~
2 14 1. ~~Except with respect to a policy containing both~~
2 15 ~~underinsured motor vehicle coverage and uninsured or~~
2 16 ~~hit-and-run motor vehicle coverage, nothing~~ Nothing contained
2 17 in this chapter shall be construed as requiring forms of

2 18 coverage provided pursuant hereto, whether alone or in
2 19 combination with similar coverage afforded under other
2 20 automobile liability or motor vehicle liability policies, to
2 21 afford limits in excess of those that would be afforded had
2 22 the insured thereunder been involved in an accident with a
2 23 motorist who was insured under a policy of liability insurance
2 24 with the minimum limits for bodily injury or death prescribed
2 25 in subsection 11 of section 321A.1. Such forms of coverage
2 26 may include terms, exclusions, limitations, conditions, and
2 27 offsets which are designed to avoid duplication of insurance
~~2 28 or other benefits duplicate payment of damages.~~

~~2 29 To the extent that Hernandez v. Farmers Insurance Company,
2 30 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking
2 31 of uninsured or underinsured coverages in contravention of
2 32 specific contract or policy language, the general assembly
2 33 declares such decision abrogated and declares that the
2 34 enforcement of the antistacking provisions contained in a
2 35 motor vehicle insurance policy does not frustrate the
3 1 protection given to an insured under section 516A.1.~~

3 2 2. Pursuant to chapter 17A, the commissioner of insurance
3 3 shall, by January 1, 1992, adopt rules to assure the
3 4 availability, within the state, of motor vehicle insurance
3 5 policies, riders, endorsements, or other similar forms of
3 6 coverage, the terms of which shall provide for the stacking of
3 7 uninsured and underinsured coverages with any similar coverage
3 8 which may be available to an insured.

3 9 3. It is the intent of the general assembly that when more
3 10 than one motor vehicle insurance policy is purchased by or on
3 11 behalf of an injured insured and which provides uninsured,
3 12 underinsured, or hit-and-run motor vehicle coverage to an
3 13 insured injured in an accident, the injured insured is
3 14 entitled to recover up to an amount equal to the highest
3 15 single limit for uninsured, underinsured, or hit-and-run motor
3 16 vehicle coverage under any one of the above described motor
3 17 vehicle insurance policies insuring the injured person which
3 18 amount shall be paid by the insurers according to any priority
3 19 of coverage provisions contained in the policies insuring the
3 20 injured person.

3 21 2. A policy to which this chapter applies shall not
3 22 include exclusions or step-down provisions that eliminate or
3 23 reduce uninsured or underinsured coverage for a person who
3 24 would otherwise be covered under the policy, for the reason
3 25 that the person is injured by, or while occupying a vehicle
3 26 being operated by, another person insured under the policy.

3 27 Sec. 3. Section 516A.4, Code 2009, is amended to read as
3 28 follows:

3 29 516A.4 INSURER MAKING PAYMENT == REIMBURSEMENT ==
3 30 SETTLEMENT == SUBSTITUTE TENDER == GOOD FAITH.

3 31 1. In the event of payment to any person under the
3 32 coverage required by this chapter and subject to the terms and
3 33 conditions of such coverage, the insurer making such payment
3 34 shall, to the extent thereof, be entitled to the proceeds of
3 35 any settlement or judgment resulting from the exercise of any
4 1 rights of recovery of such person against any person or
4 2 organization legally responsible for the bodily injury for
4 3 which such payment is made, including the proceeds recoverable
4 4 from the assets of the insolvent insurer, to the extent that
4 5 the proceeds of the resulting settlement or judgment, when
4 6 combined with such payment made by the insurer, exceed such
4 7 person's damages. The person to whom said payment is made
4 8 under the insolvency protection required by this chapter shall
4 9 to the extent thereof, be deemed to have waived any right to
4 10 proceed to enforce such a judgment against the assets of the
4 11 judgment debtor who was insured by the insolvent insurer whose
4 12 insolvency resulted in said payment being made, other than
4 13 assets recovered or recoverable by such judgment debtor from
4 14 such insolvent insurer.

4 15 2. An insurer providing coverage under this chapter shall,
4 16 within thirty days after receipt of a written request for
4 17 permission to settle with any person or organization legally
4 18 responsible for bodily injury for which coverage is provided
4 19 under this chapter, either give consent to the settlement or
4 20 tender substitute payment of the settlement amount. Failure
4 21 of the insurer to give such consent or to tender substitute
4 22 payment shall constitute the insurer's consent to the
4 23 settlement and shall bar the insurer from claiming that the
4 24 settlement prejudiced the insurer's rights under the policy or
4 25 this section.

4 26 3. An insurer that pursues, through subrogation or
4 27 assignment, a claim against any person or organization legally
4 28 responsible for bodily injury for which the insurer has made

4 29 payments under this chapter, shall include in such claim all
4 30 damages of the subrogor or assignor of the claim, and shall
4 31 tender to the subrogor or assignor any amounts to which the
4 32 subrogor or assignor would have been entitled under subsection
4 33 1 if the subrogor or assignor had directly pursued the claim.
4 34 4. An insurer shall act in good faith in response to a
4 35 claim for benefits under coverage required by this chapter.
5 1 An insurer who fails to act in good faith in response to such
5 2 a claim for benefits shall be liable to the person owed such
5 3 benefits for all damages caused by such failure, including
5 4 interest, reasonable attorney fees and expenses, and punitive
5 5 damages if the required showing is made pursuant to chapter
5 6 668A. For the purposes of this subsection, "good faith" means
5 7 an informed judgment based on honesty and diligence, supported
5 8 by evidence that the insurer knew or should have known at the
5 9 time the insurer made a decision on the claim. The insurer
5 10 shall have the burden of proving that it acted in good faith.

5 11 EXPLANATION

5 12 This bill relates to automobile or motor vehicle insurance
5 13 coverage of liability arising from uninsured, underinsured, or
5 14 hit-and-run motorists.

5 15 Code section 516A.1 is amended to require coverage for
5 16 damages arising out of reasonable avoidance of physical
5 17 contact with a hit-and-run motor vehicle. Coverage is also
5 18 required for uninsured, underinsured, and hit-and-run motor
5 19 vehicle liability that equals the limits of liability for the
5 20 bodily injury portion of the insurance policy instead of the
5 21 statutory amounts required for proof of financial
5 22 responsibility in Code section 321A.1(11). A form furnished
5 23 by the insurance company allowing an insured to reject any or
5 24 all of the required coverage must include an explanation of
5 25 the coverage being rejected and the amount of the premium
5 26 associated with the coverage being rejected.

5 27 Code section 516A.2(1) is amended to provide that such
5 28 coverage may include provisions that are designed to avoid
5 29 duplicate payment of damages. The remainder of Code sections
5 30 516A.2(1) and 516A.2(2) relating to stacking of uninsured and
5 31 underinsured coverages, and Code section 516A.2(3) relating to
5 32 coverage under multiple motor vehicle insurance policies of
5 33 one insured, are stricken. Code section 516A.2 is amended to
5 34 prohibit exclusions or step-down provisions in motor vehicle
5 35 insurance policies that eliminate or reduce uninsured or
6 1 underinsured coverage for a person who would otherwise be
6 2 covered under the policy, because the person is injured by, or
6 3 while in a vehicle being operated by, another person insured
6 4 under the policy.

6 5 Code section 516A.4(1) is amended to provide that an
6 6 insurer who has made payments under a policy to an injured
6 7 party is entitled to proceeds of a resulting settlement or
6 8 judgment against the person responsible for those damages only
6 9 to the extent that the proceeds combined with payment made by
6 10 the insurer exceed the injured party's damages.

6 11 Code section 516A.4(2) provides that an insurer has 30 days
6 12 after receipt of a request to settle against the responsible
6 13 party, to either consent to the settlement or to tender
6 14 substitute payment of the settlement amount, or such failure
6 15 will constitute consent and bar the insurer from claiming
6 16 prejudice as a result of the settlement.

6 17 Code section 516A.4(3) provides that when an insurer
6 18 pursues a claim, through subrogation or assignment, against
6 19 the party responsible for bodily injury for which the insurer
6 20 has made payments, the insurer shall include the damages of
6 21 the subrogor or assignor and tender the amount to the assignor
6 22 or subrogor that the person would have been entitled to if
6 23 that person had pursued the claim directly.

6 24 Code section 516A.4(4) requires an insurer to act in good
6 25 faith in response to a claim for uninsured, underinsured, or
6 26 hit-and-run benefits under Code chapter 516A and provides that
6 27 an insurer that does not act in good faith is liable to the
6 28 person owed such benefits for all damages caused by that
6 29 failure, including interest, reasonable attorney fees and
6 30 expenses, and punitive damages upon the showing required under
6 31 Code chapter 668A. For the purposes of this provision, "good
6 32 faith" means an informed judgment based on honesty and
6 33 diligence, supported by evidence that the insurer knew or
6 34 should have known at the time the insurer made a decision on
6 35 the claim. The insurer has the burden of proving that it

7 1 acted in good faith.

7 2 LSB 1752SC 83

7 3 av/nh/5